



Central Region
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Governor's Office of Planning & Research

September 15 2021

September 15, 2021

STATE CLEARINGHOUSE

Juergen Vespermann
California Department of Transportation, Central Region Environmental
2015 East Shields Avenue, Suite 100-200
Fresno, California 93726

**Subject: Kettleman Roundabout Project (Project)
Initial Study with proposed Negative Declaration
State Clearinghouse No. 2021080315**

Dear Mr. Vespermann:

The California Department of Fish and Wildlife (CDFW) received a proposed Negative Declaration (ND) and its supporting Initial Study (IS) prepared by the California Department of Transportation (Caltrans) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish and G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes to construct a roundabout at an existing light-controlled intersection. This Project will necessitate the acquisition of right-of-way and include demolition of the existing roadway and hard shoulder, conversion of the existing shoulder backing to a widened paved roadway, the conversion of adjacent ruderal, scrub, and grassland habitat areas which persist at the north and south ends of the Project Area to new shoulder backing, and the reconstruction of the roadway.

Location: The roundabout will be constructed at the existing intersection of State Route 41 and Bernard Drive in the city of Kettleman City in southern Kings County. The Project Area will involve 0.3 miles of State Route 41 where it approaches and departs the intersection. This segment of State Route 41 exists between post mile 16.6 and post mile 16.9.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments to assist Caltrans in adequately identifying and sufficiently reducing to less-than-significant the potentially significant, direct and indirect Project-related impacts to fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Currently, the proposed ND indicates that the Project-related impacts to Biological Resources would be less-than-significant with implementation of specific Avoidance, Minimization, and/or Mitigation Measures. However, as currently drafted, it is unclear: 1) whether some of the species specific measures proposed in the IS sufficiently reduce to less-than-significant the potential Project-related impacts to those species, and 2) how Caltrans came to the conclusion that there will be no impacts to at least one State listed and fully protected species CDFW considers potentially present in the vicinity of the Project Area.

In particular, Caltrans concludes there will be: 1) less-than-significant impacts to the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*) and the

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State species of special concern loggerhead shrike (*Lanius ludovicianus*) with implementation of proposed Avoidance, Minimization and/or Mitigation Measures, and 2) no Project-related impacts to the State and federally endangered (and State fully-protected) blunt-nosed leopard lizard (*Gambelia sila*) or the rare and endemic Crotch bumble bee (*Bombus crotchii*) a Species of Greatest Conservation Need (SGCN) in California (CDFW 2015). CDFW does not agree with these conclusions and will herein suggest measures to avoid Project-related impacts to these species, thereby reducing to less-than-significant the Project-related impacts to them. CDFW will also provide herein a path forward for Caltrans in the event avoidance of three of the four species is not feasible.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: San Joaquin Kit Fox (SJKF)

Issue: The Project activities will involve varying degrees of ground disturbance, staging, and laydown of equipment and materials along the 0.3-mile segment of State Route 41 north and south of Bernard Drive. Some of the Project activities may constitute a novel disturbance sufficient to cause denning SJKF to abandon their dens causing increased susceptibility to predation and resulting in abandoned pups. Caltrans proposes “Pre-construction surveys would be conducted for San Joaquin kit foxes no less than 14 days and no more than 30 days before the beginning of ground disturbance and/or construction activities or any project activities likely to impact the San Joaquin kit fox.” However, Caltrans provides no details regarding the survey area, the survey methods, or the no disturbance buffers which would be observed in the event active dens are detected in the vicinity of the Project Area.

Specific Impacts: While CDFW agrees with Caltrans’ plans to conduct pre-construction surveys and the other measures proposed to minimize and/or avoid impacts to the species, CDFW has specific recommendations as to the survey methods, survey areas, and no disturbance buffers in the event active dens are detected.

Evidence impact would be significant: While habitat loss resulting from agricultural, urban, and industrial development is the primary threat to SJKF (Cypher et al., 2013), disturbance in proximity to a den can result in unsuccessful pupping and cause individuals to become more susceptible to predation. Both results of the Project-related disturbance could constitute significant impacts to the species.

Recommended Potentially Feasible Avoidance, Minimization and Mitigation Measure(s): Because SJKF are known to occur in the general vicinity of the Project footprint and because dens could be present in the vicinity of the Project Area, CDFW recommends the following edits to the SJKF Avoidance, Minimization, and Mitigation

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Measure section of the IS. Further, CDFW recommends these revised measures be made conditions of Project approval.

Recommended Edits to the *Avoidance, Minimization, and/or Mitigation Measures* for SJKF which begin on page 20 of the IS.

CDFW recommends the pre-construction surveys for SJKF be conducted to identify SJKF dens at and within 250 feet of the Project Area and that Caltrans' contractors observe no disturbance buffers around any active dens detected during the surveys. CDFW recommends a 250-foot no disturbance buffer around natal dens, a 100-foot no disturbance buffer around known dens, and a 50-foot no-disturbance buffer around potential or atypical dens, and absolutely no disturbance to the dens within the above buffers without contacting CDFW and obtaining written authorization to do so. If the aforementioned edits to the existing Avoidance, Minimization and/or Mitigation Measures are not made, and/or the aforementioned buffers are not feasible, CDFW recommends Caltrans propose obtaining incidental take coverage under section 2081 subdivision (b) of Fish and Game Code in the revised IS, and that the revised IS support a Mitigated Negative Declaration. In summary, if the edited avoidance measure is not feasible, mitigation (take authorization) would be required to reduce to less-than-significant the unavoidable Project-related impact on SJKF.

COMMENT 2: Loggerhead Shrike

Issue: Loggerhead shrikes are known to occur in the vicinity of the Project Area (CDFW 2021). The Project activities will involve varying degrees of ground disturbance within the right-of-way and while CDFW agrees that individuals of the species in the area may have become habituated to vehicular traffic along the right-of-way and the commercial activity adjoining Project Area, CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment if they occur within 250 feet of an active nest. This nest abandonment would represent a significant impact to the species.

Specific Impacts: In the IS, Caltrans indicates it will survey for nesting loggerhead shrike no more than 30 days prior to commencing Project activities and maintain a 100-foot no disturbance buffer around any active nests detected. However, CDFW considers this 100-foot no disturbance buffer insufficient to avoid impacts to nesting individuals of the species. Therefore, CDFW does not agree that the proposed 100-foot no-disturbance buffer reduces to less-than-significant the potential Project-related impact on the species.

Evidence impact would be significant: Loggerhead shrike may nest in shrubs which occur within the ruderal and scrub habitat areas adjoining the north and south ends of the Project Area, or in ornamental shrubs which occur as part of the commercial development adjoining portions of the Project Area. Adoption of the ND as it is written will allow activities that will involve ground disturbance, grading, paving, demolition, and

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excavation employing heavy equipment and work crews within 100 feet of active loggerhead shrike nests. These activities could affect these nests and have the potential to result in nest abandonment, significantly affecting nesting loggerhead shrike.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s): Because the Project-related activities could represent novel stimuli and threaten nest abandonment, CDFW recommends Caltrans propose a greater no-disturbance buffer in order to reduce to less-than-significant the Project-related impacts on the species. CDFW recommends the following edits to the loggerhead shrike avoidance, minimization, and mitigation measures section of the IS. Further, CDFW recommends these revised measures be made conditions of Project approval.

Recommended Edits to *Avoidance, Minimization, and/or Mitigation Measures* for Loggerhead Shrike which begin on page 21 of the IS.

Currently, under the Avoidance, Minimization and/or Mitigation Measures section of the IS, Caltrans proposes a 100-foot no-work buffer around active loggerhead shrike nests at and near the Project Area. CDFW recommends Caltrans edit this measure to require a minimum 250-foot buffer around active nests detected during the pre-construction surveys. If the aforementioned edit to the existing measure is not made, and/or the aforementioned buffer is not feasible, CDFW recommends Caltrans propose consultation with the CDFW prior to commencing Project activities.

COMMENT 3: Blunt-Nosed Leopard Lizard (BNLL)

Issue: BNLL are known to occur in the general vicinity of the Project Area (CDFW 2021). While much of the land on both sides of the Project site exists as landscaped areas associated with commercial development, there are discreet areas adjoining the north and south ends of the Project Area which persist as ruderal, scrub, and grassland habitats. CDFW recommends Caltrans require in the IS that these areas be assessed to determine if they represent suitable BNLL habitat. If these areas are found to constitute suitable BNLL habitat, and if small mammal burrows at and within 50 feet of Project Area cannot be avoided during Project implementation, Caltrans should require in the IS that protocol-level surveys in these areas be conducted in advance of Project activities to demonstrate that the species is not present and that the Project-related impacts to this species is less than significant.

Specific Impacts: Without a determination with respect to the presence or absence of even marginal BNLL habitat at and adjoining the Project Area, CDFW cannot concur that the Project-related impacts to the species are less-than-significant. BNLL spend much of their time underground in burrow chambers which extend as far as 50 feet from a burrow opening and unless those burrow openings are avoided by 50 feet, Project-related ground disturbance can result in take of the species through burrow chamber collapse, entrapment, etc. In the IS, Caltrans does not address the potential presence or Project-related impacts on the species.

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Evidence impact would be significant: Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to BNLL. Very little suitable habitat for this species remains along the western floor of the San Joaquin Valley. The range for BNLL now consists of scattered parcels of undeveloped land within the valley floor and the foothills of the Coast Range (USFWS 1998). As the adjacent aqueduct levy appears to provide connectivity between the Project Area and known occupied BNLL habitat southeast and southwest of the Project Area (CDFW 2021), BNLL could continue to occupy these habitat areas at and adjoining the Project Area and the Project-related ground disturbance in these areas could result in significant impacts on the species.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s) Because suitable BNLL habitat may be present in the vicinity of at least portions of the Project Area, CDFW recommends the following measures be added to ensure that impacts to the species will be less-than-significant and completely avoided. Further, CDFW recommends these measures be made conditions of Project approval.

Recommended Addition of Avoidance Measure for Blunt-Nosed Leopard Lizard to the IS.

If suitable habitat is present at or within 50 feet of the Project area, CDFW recommends conducting surveys in accordance with the “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” (CDFW 2019) prior to initiating any vegetation- or ground-disturbance activities. This survey protocol, designed to optimize BNLL detectability, reasonably assures CDFW that ground disturbance will not result in take of this fully-protected species.

CDFW advises completion of BNLL surveys no more than one year prior to initiation of ground disturbance. Please note that protocol-level surveys must be conducted on multiple dates during late spring, summer, and fall and that within these time periods there are specific protocol-level date, temperature, and time parameters which must be adhered to. As a result, protocol-level surveys for BNLL are not synonymous with 30-day “pre-construction surveys” often recommended for other wildlife species. In addition, the BNLL protocol specifies different survey effort requirements based on whether the disturbance results from maintenance activities or if the disturbance results in habitat removal (CDFW 2019).

COMMENT 4: Crotch Bumble Bee (CBB)

Issue: CBB have been documented to occur within areas of suitable habitat within the Project vicinity (CDFW 2021). Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris

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(Williams et al. 2014). Therefore, potential ground disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations.

While much of the land on both sides of the Project site exists as commercial development, there are discreet areas adjoining the north and south ends of the Project Area which persist as ruderal, scrub, and grassland habitat. CDFW recommends Caltrans conduct an assessment of these habitat areas adjoining the Project Area for potentially suitable CBB habitat. If suitable CBB habitat exists in areas of planned Project-related ground disturbance, equipment staging, or materials laydown, potential CBB nesting sites in these areas would have to be avoided in order to reduce to less-than-significant the Project-related impacts to the species.

Specific Impacts: Without a determination with respect to the presence or absence of CBB habitat at and adjoining the Project Area, CDFW cannot concur that the Project-related impacts to the species are less-than-significant. CBB nest in underground burrows and in thatched area and unless these potential nest sites are avoided, Project-related ground disturbance could result in take of the species. In the IS, Caltrans does not address the potential for the presence of CBB at or near the Project area.

Evidence impact would be significant: CBB was once common throughout most of the central and southern California; however, it now appears to be absent from most of it, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years. CBB could continue to occupy the habitat areas within and adjoining portions of the Project Area and Project-related ground disturbance in these areas could result in significant impacts to the species.

Recommended Potentially Feasible Avoidance, Minimization, and Mitigation Measure: Because suitable CBB habitat may be present in the vicinity of at least portions of the Project Area, CDFW recommends the following measure be added to ensure that impacts to the species will be less-than-significant and completely avoided. Further, CDFW recommends these measures be made conditions of Project approval.

Recommended addition of Avoidance, Minimization, and/or Mitigation Measures for CBB in the IS.

In order to determine if CBB occupy habitat areas of the right-of-way or adjoining lands, CDFW recommends Caltrans revise the IS to include plans to assess whether habitat areas within or adjoining the right-of-way constitute suitable habitat for CBB. If not, this should be addressed in the IS and no further measures would be needed. But if suitable habitat is present at or near the right-of-way, and suitable burrows or areas of thatch cannot be avoided, CDFW recommends the IS include a measure requiring surveys for CBB in advance of commencing Project activities. If no individuals or nests are detected during these surveys, Caltrans may in fact be able to accomplish the Project avoiding the species and significant impacts to the

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species. However, if CBB are found to occupy habitat areas at or near the right-of-way, the Project would have the potential to result in significant impacts to the species unless the potential nesting sites can be avoided. If this avoidance is not feasible, CDFW recommends Caltrans propose consultation with CDFW in the revised IS.

II. Editorial Comments and/or Suggestions

Appropriateness of ND: In summary, the above recommended revisions to the IS pertain to avoidance of SJKF and their dens, nesting loggerhead shrike, BNLL and CBB within specified buffers from the Project Area to completely avoid significant impacts to these species under this Negative Declaration. If surveys confirm the presence of any of the aforementioned species at or within the species-specific buffers, Caltrans may not be able to accomplish the Project avoiding significant impacts to these species without first obtaining incidental take authorization under section 2081 subdivision (b) of Fish and Game Code (except in the case of BNLL for which CDFW cannot issue incidental take authorization and CBB for which take authorization would not be required). Incidental take authorization would involve minimization of, and mitigation for, take of the permitted species. Considering this, CDFW recommends Caltrans incorporate the recommended revisions to the IS and propose an MND for the Project, in lieu of the currently proposed ND.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

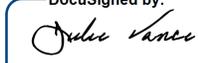
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

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CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and avoiding the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Steven Hulbert, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 575-6415 or by electronic mail at steven.hulbert@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment 1: Recommended Mitigation and Monitoring Reporting Program

cc: United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

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LITERATURE CITED

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Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: Kettleman Roundabout Project

SCH No.: 2021080315

RECOMMENDED MITIGATION MEASURE(S)	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SJKF Surveys and Avoidance	
Mitigation Measure 2: SJKF Take Authorization (if avoidance is not feasible)	
Mitigation Measure 3: Loggerhead Shrike Surveys and Avoidance	
Mitigation Measure 4: Loggerhead Shrike consult (if avoidance is not feasible)	
Mitigation Measure 5: BNLL Avoidance (survey and establish buffers)	
Mitigation Measure 6: CBB Avoidance (survey and establish buffers)	
<i>During Soil or Vegetation Disturbance</i>	
Mitigation Measure 7: SJKF Avoidance	
Mitigation Measure 8: Loggerhead Shrike Avoidance	
Mitigation Measure 9: BNLL Avoidance (observe buffers and monitor)	
Mitigation Measure 10: CBB Avoidance (observe buffers and monitor)	